death occurred, for the purposes of giving it proper care and burial. This right of undisturbed possession which vests in the husband or wife or next of kin of the deceased is clearly one that the law can protect, and the decision of the New York court in sustaining an action for its violation seems entirely sound. Even if so clearly defined a legal right did not exist, the courts would probably have no trouble in supporting an action of this sort on some broader ground. It is one of those instances where failure of justice would involve such a shock to every feeling of decency and propriety that the law positively must disclose a principle to cover it. The development in recent times of such rights as the right to privacy shows that the common law is ever ready to expand in response to demands of that nature.

ADEMPTION OF GENERAL LEGACIES. — That a gift by a testator during his lifetime will often be regarded in law as a satisfaction of a legacy of money under a previously executed will, is clear. But the circumstances under which this so-called ademption of the legacy takes place have not always been sharply defined, and the various rules laid down by judges in attempting to define them led to much confusion in the early cases. It is consequently agreeable to find the subject so clearly and satisfactorily treated as it is by the Michigan court in the recent case of *Carmichael* v. *Lathrop*, 66 N. W. Rep. 350. The point decided, namely, that a general bequest to one of the testator's children of a share in the residue of his personal estate would be satisfied *pro tanto* by a conveyance of real estate during the life of the testator, is well settled in courts of equity. The importance of the case lies in the fact that it is illustrative of nearly all the leading phases of the doctrine of ademption.

The first and most important rule on the subject is, that, while ordinarily a gift will not adeem a legacy without clear proof of the testator's intention, nevertheless, where the testator is the father of the legatee, or stands *in loco parentis* to him, the gift will be presumed to be in satisfaction of the legacy, in whole or in part, unless a contrary intention appears. Originating in the dislike courts felt for double portions, and their eagerness to presume that a father intended to deal with all his children alike, the rule has been extended so that it now operates universally, regardless of the inapplicability of the original reason. It has been criticised by eminent writers as unfair to legitimate children, who in this respect are in a worse position than illegitimate children or strangers. Story, Equity Jurisprudence, §§ 1110 *et seq.* But though it is often difficult to determine whether the testator stood *in loco parentis* to the legatee (see *Powys* v. *Mansfield*, 3 Myl. & C. 359), wherever that relation is found to have existed the presumption arises, unless the case falls within certain exceptions to the rule. *Carmichael* v. *Lathrop*, *supra*, illustrates one of the chief exceptions, namely, that where the legacy and the gift are not *ejusdem generis* the presumption will not arise. "Land is not to be taken in satisfaction for money, nor money for land." *Bellasis* v. *Uthwatt*, 1 Atk. 426. Difficult as it may be to find a reason for this exception, it is as well established as the rule itself. *Holmes* v. *Holmes*, 1 Bro. C. C. 555; *Evans* v. *Beaumont*, 4 Lea, 599. That the presumption did not arise in the case under discussion proved immaterial, however, as there was ample evidence of the testator's intention, which is always decisive.

In the early days the presumption would have failed in *Carmichael* v.

Lathrop, for the additional reason that the bequest was of a share in the residue, uncertain in amount, so that the testator could not have known the relative size of gift and legacy, and consequently would not be likely to have intended the one in satisfaction of the other. Story, Equity Jurisprudence, § 1115. But this principle ceased to operate when it came to be held that the ademption of a legacy might be partial, as well as total. *Pym* v. *Lockyer*, 5 Myl. & C. 29. See, on the entire subject of the ademption of general legacies, Roper on Legacies, Ch. VI.

"THE UNWISDOM OF THE COMMON LAW." — A somewhat discouraging view of the common law is taken by Mr. J. C. Courtney in a recent address before the Illinois Bar Association. The writer's proposition is that all the learned eulogists of the common law have been mistaken; that, in truth, while great progress has been made in other branches of human learning, the common law has remained stationary, retaining rules which had their origin and meaning in conditions long since passed away. It may be admitted that some rules unsuited to modern conditions have become fixed in our law. The modern mind finds it difficult to see the necessity of a seal, or to understand why a testator's plain intention should be thwarted by the technical rule in *Shelley's Case*. That such rules exist is due to Anglo-Saxon conservatism and to the failure of judges, before yielding to mere antiquity, to consider whether the reasons in which the rules originated are still valid. Few lawyers, however, would agree that such instances preponderate, or that, on the whole, the common law of any given period has not succeeded fairly well in meeting the practical demands of that period. Such a view overlooks the frequent modification of ancient technical rules, and the development of new ones, to meet new conditions, and, in general, the well proved capacity of our law for growth commensurate with the needs of the times.

ONE-MAN COMPANIES AGAIN. — The Queen's Bench Division has had occasion to deal with the question of one-man companies which created some sensation last year in the well known case of *Broderip* v. *Salomon*, [1895] 2 Ch. 323, noticed in 9 HARVARD LAW REVIEW, 280. In the case in question there were two men substantially interested, and an action was brought directly against them by a creditor of the company. All that the court decided was that while the company was not joined there could be no recovery, and it declined to commit itself on the possibility of an eventual liability on the part of the real promoters. *Nunkittrick* v. *Perryman*, 12 *The Times* L. R. 232.

There can be no doubt that *Broderip* v. *Salomon* was meant to strike at one-man companies regardless of their fraudulent intent. Vaughan Williams, J., did talk somewhat of delaying and defrauding creditors, but the Court of Appeal clearly put the decision upon an evasion of the purposes of the Joint Stock Companies Act. It would seem therefore that the decision of the Queen's Bench Division must necessarily be provisional and dependent upon the neglect of the plaintiff to proceed through the company, for it is hardly probable that a lower court would qualify the direct *ratio decidendi* of its superior.

Still we have here not a one-man, but a two-man company. The distinction may be vital, though it would seem not. If the object of the